

OUTGOING AIRGRAM

Department of State

RESTRICTED SECURITY INFORMATION  
CLASSIFICATION

USPOLAD

TOKYO

A-462 Jan 9, 1952

Subject: FCN Treaty with Japan. Mission's Despatch  
DEC 19.

This is the third and concluding airgram in reply to ref. despatch. It may arrive ahead of its two companions.

Article XX. The Department does not quite understand why the Japanese should feel it necessary to request "assurances" that "the security export control item would not constitute 'unnecessary delays and restriction', as specified in this article". There is a general security reservation in Article XXI, paragraph 1 (d), which is applicable to transit as well as to other matters; and the Department wonders why the Japanese might fear lest question be raised about controls which the U. S. and Japan presumably agree are necessary and proper for security reasons. Clarification is requested.

Article XXI.

1. Answered separately.
2. The Department would be agreeable to framing the political activities reservation as a separate paragraph and transferring it to this Article (cf., for example, paragraph 4 of Articles XVIII and XX, respectively, of the Uruguay and Irish treaties). In that case, it would be omitted from Article VIII, to avoid needless repetition.
3. The Department does not believe the proposed (f) is appropriate. The two provisions in the treaty in connection with which it is necessary and proper to allow for balance-of-payments difficulties are Articles VII and XIV; and when adequate balance-of-payments reservations are formulated in these two connections,

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DEPARTMENT OF STATE  
REVIEWED BY W. Hall  
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it is unnecessary and undesirable to have an additional or duplicating reservation on the subject in Article XXI. The Department is pleased to note that the Japanese are apparently prepared to concur in this viewpoint. As to Article XII, the terms thereof already contain ample reservations. As to Article XIV, the proper approach to a necessary reservation is discussed in Departments A-441, December 31; and it is presumed that the process of a mutual fashioning of a suitable reservation applicable to Article XIV will settle any questions concerning the consistency of Japan's present foreign-exchange controls, and quarterly budget system, with U. S. treaty objectives.

4. Paragraph 1 (a) is traditional. Gold and silver are the two historically recognized monetary metals, having their primary significance in connection with coinage, financial reserves and international transfers of payments, rather than as commodities in trade. The reservation is designed to clarify that they need not be treated as commodities in trade under the provisions of the treaty (notably, Article XIV). It would be unnecessary and irrelevant to add to this reservation other metals which lack the primarily monetary character of gold and silver. Nothing in the treaty would forbid whatever export restrictions on platinum, etc. that the Japanese may see fit to impose, so long as such restrictions are non-discriminatory as to the U. S. (see Article XIV, paragraph 2). Furthermore, there are adequate provisions already in the draft, including the two subparagraphs cited by Mission, which permit deviations from the principle of non-discrimination for recognized and justifiable reasons.

Article XXII.

1. If the Japanese feel it would be helpful to do so, the Department would not object to including a definition of the word "products", as in Article XXIV, paragraph 7 of the Greek treaty. A similar definition has been standard in the treaties signed during 1949-51, being usually carried in the last paragraph of the Article which is numbered XIV in the draft proposed to Japan: e.g., Article XII, paragraph 4, of the Irish treaty.

The Department

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2. The Department would be prepared to discuss shifting the second sentence of paragraph 3 to another position, if the Japanese desire. It is carried at its present location for reasons more of convenience than of strict logic.

Article XXIII.

Attention is invited to paragraph 6 of the Protocol, which should remove any occasion for arguing that the wording of Article XXIII might be ambiguous as to the Ryukyus at present. The question of the future status of the Ryukus is, of course, one which is not a concern of the FCN treaty negotiation; and the Department does not believe that any useful purpose would be served by attempts to revise Article XXIII so as to provide for possible contingencies created by the ultimate status of the Ryukus. Any such contingency, should it materialize, can be dealt with at the time final settlement of status occurs. As to the particular proposal to change the "or" to "and", between the words "sovereignty" and "authority", this change would be unacceptable for the reason that it would imply a U. S. claim of "sovereignty", in the international law sense, over the Panama Canal Zone and the Trust Territory of the Pacific.

Additional Japanese Proposal. Comments on this question have previously been communicated, under cover of Department's instruction no. 63 of November 1. As there stated, the GATT is in force only "provisionally" and subject to existing legislation in each member country. Closer U. S. conformance with the GATT rules on valuation depends on Congressional action; and the Department is not in position to deal with the subject in an FCN treaty.

The Department is looking forward to receipt of Mission's report on the meeting which was scheduled for December 21 or 22.

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USPOLAD

TOKYO

A-473, Jan. 14, 1952

DECLASSIFICATION DATE 12/16/89

PER *Haney* OFFICE *CBL*

FADRC FOI CASE NO. 7402989

Subject: FCN Treaty with Japan. Mission's Despatch 924,  
December 19.

This is one of three airgrams in reply to ref. despatch.

## Article XVIII.

1. No comment at the moment.
2. The Mission was correct in pointing out that paragraph 2 is confined to situations in which there is competition.

## Article XIX.

1. Should the Japanese again propose that the reservation clause of paragraph 3 be made into a separate paragraph, the Department would be willing to entertain the proposal, as it is merely a matter of form concerning which an accommodation is expedient.
2. The Department would be prepared also to entertain a Japanese request to add to the treaty material like that found in Article XXI, paragraph 6, of the Greek treaty, describing the applicability of the term "boasting trade" to transshipment situations.
3. The Japanese apparently understand correctly the broad scope of the term "national fisheries". Each country reserves the right to accord special or exclusive privileges to its own fishing vessels regardless of where these vessels may catch their fish; to define the conditions vessels must fulfill in order to be entitled to such privileges; and to bar foreign vessels from fishing in its territorial waters. The right also to give special treatment to the catch of national vessels is made clear in paragraph 6 (a) of

Article

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## Article XIV.

4. The Department would be agreeable to an elaborated statement of the subject-matter of paragraph 5, if the Japanese desire, and is willing to consider Article XV of the initial Japanese draft as the basis therefor. It is suggested, however, that the latter be restated so as to conform stylistically with Department's standard draft; and that it be reorganized, if feasible, into a single paragraph, so that it may fit into the present framework of the navigation Article.

The phrase "damages at sea on the coasts" is awkward; and it is suggested, accordingly, that the words "or damages at sea" be dropped, as the point appears to be covered by the words "forced putting into a port". It is suggested, also, that the words "which is open or is not open" be changed to read "whether or not open". The material in paragraph 2 can be compressed into a simple "most-favored-nation treatment" clause. The substitution of the Japanese version may also require a fresh inspection of the terms of paragraph 6.

5. (a) The Department proposes that mention of paragraph 2 be added to paragraph 6, so that the reference in the fourth line will read: "paragraph 2 and paragraph 5 of the present Article"

(b) It may be noted that the right of refuge of warships in distress would not be exercisable in a manner inconsistent with the rules of neutrality under international law. (See, on this point, Protocol paragraph 12 of the treaty with Ireland).

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